

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6657 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and Sd/-

Hon'ble MR.JUSTICE P.B.MAJMUDAR Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO
1 to 5 No
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RAJPUTANA STEEL CASTING PVT LTD

Versus

SALES TAX OFFICER

Appearance:

DR MAHESH THAKAR for Petitioners

MR MG DOSHIT for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 2, 3

CORAM : MR.JUSTICE B.C.PATEL and

MR.JUSTICE P.B.MAJMUDAR

Date of decision: 27/09/1999

ORAL JUDGEMENT (per B.C.Patel, J.)

Petitioner, Rajputana Steel Castings Pvt. Ltd.,
through its Managing Director R.K.Tyagi, has preferred

this petition and has made prayer to set aside and quash the demand notice and other proceedings at the instance of respondent No.1, Sales Tax Officer, Class 1, Division II, Godhra, District Panchmahal. The petitioner has further prayed to restrain respondent No.1 from initiating any action pending hearing of this petition and pending final decision by the Industries Commissioner, Respondent No.3, having his office at Gandhinagar. The petitioner has further prayed to direct respondent No.1 to continue the sales tax incentive as requested by the Industries Commissioner by his order dated 2.8.1995 (it should be 4.5.1999 - letter which is produced at page 243 of the petition).

2. Mr.R.P.Mehta from the office of the Industries Commissioner has appeared personally before this court along with file of the petitioner unit. He has pointed out that the application of the petitioner had been rejected for issuance of certificate. On 27.9.1995, the State Level Committee discussed the matter and the Committee had reason to believe that production has not commenced on the date on which it is stated to have commenced. It appears that, thereafter, again a request was made in writing which has been rejected by the office of the Industries Commissioner on 11.12.1996. Thus, it is very clear that the request of the petitioner to grant him certificate for getting subsidy and exemption from sales tax has been rejected. The petitioner went on addressing letters to the Industries Commissioner. By letter dated 25.7.1997, the petitioner was again informed that the State Level Committee again considered the matter in its meeting and has expressed an opinion that the request cannot be accepted and has confirmed the decision taken by the Committee earlier. All these letters have been forwarded to the petitioner but it is surprising that the petitioner has not annexed any of these letters. It appears that the petitioner continued to address letters inter alia stating that his case is a pipeline case and benefit should be given. From the file it transpires that the petitioner produced the first bill indicating sale of 2.285 MTs of M.S.Ingot. In this behalf, opinion of expert was also obtained. As per the opinion, for the purpose of manufacturing 2.285 MTs of M.S.Ingot, a unit would consume 2300 units from 400 KVA power supply. The bills submitted by the petitioner unit were taken into consideration for the months of June and July 1993. Reading the bills, it appears that the total consumption of electric energy was 1270 units. In the opinion of the expert, the unit could not have manufactured the quantity which is stated to have been manufactured by the petitioner unit for the purpose of

requesting that the case is covered under the Scheme. When the Committee took a decision that the unit is not entitled to get the benefit under the Scheme, none prevented the petitioner from approaching the Court at the earliest but, for the reasons best known to the petitioner unit, it went on making representations and their applications were rejected by the Industries Commissioner on the basis of the opinion of the State Level Committee.

3. Learned advocate submitted that for six years the Sales Tax Department has waited and there is no reason for the Sales Tax Department not to wait for some time or at least till the application is disposed of by the Industries Commissioner. We have indicated hereinabove that the application of the applicant unit has already been rejected. Application is like a review application. It is also required to be noted that on more than two occasions, such review applications have been rejected.

4. Mr.Doshit, learned advocate submitted that, if the unit is manufacturing, it should have produced Registration Certificate issued by the Central Excise Department which would indicate the manufacturing activities of the unit. In the light of the opinion of the expert, Mr.Doshit submitted that Registration Certificate ought to have been produced before the Court to show that the unit has commenced manufacturing activities in the month of June 1993. It appears that the Gujarat Electricity Board installed an electric connection only on 28.6.1993. The learned advocate stated that machines were installed before 28.6.1993 but he was not in a position to state the exact date of installation of machinery. According to him, the petitioner straightway commenced commercial production. It is required to be noted that, ordinarily, there would be trial production. We questioned the learned advocate that, if the manufacturing activities commenced, then he could have produced on record material to show that workmen were employed and they were paid wages. It is required to be noted that expert has given an opinion to the State Level Committee that the unit could not have commenced manufacturing activities. The learned advocate stated that he was not communicated the expert opinion. However, one thing is certain that the unit was aware that their applications were rejected on the ground that the unit could not have commenced manufacturing activities and the unit has never requested the Industries Commissioner to give reasons. It is interesting to note that, in this matter the petitioner has produced inter-departmental communication between the

office of Industries Commissioner and Assistant Sales Tax Commissioner. However, he has not produced letters addressed to the unit itself. Had the letters been produced at the earlier stage, probably, the Court would not have issued Notice. A party coming before the court has to produce all relevant material even if it may be against the party filing a petition before the Court. One has to come with clean hands for requesting the Court to exercise its extraordinary powers.

5. We are satisfied that the application has been rejected in past and by way of review application the petitioner had requested the Industries Commissioner to see that the application is granted. It does not mean that the Sales Tax Department is not entitled to recover the amount which under the law the Department is obliged to recover the amount of tax.

6. In view of what is stated hereinabove, we dismiss the petition with costs, which is quantified at Rs.5,000/- (rupees five thousand).

(KMG Thilake)

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